

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)

Inquiry Into Policies and Programs To)
Ensure Universal Telephone Service in)
a Competitive Market Environment)

RM-8388

JAN 3 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

TO: The Commission

**REPLY COMMENTS OF
SOUTHWESTERN BELL TELEPHONE COMPANY**

Southwestern Bell Telephone Company (SWBT), by its attorneys, respectfully files these Reply Comments in response to comments filed by various parties on December 16, 1993 regarding a November 1, 1993 Petition for a Notice of Inquiry and En Banc Hearing (Petition) filed by MFS Communications Company, Inc. (MFS). The MFS Petition urged the Commission to conduct an inquiry proceeding on universal service issues, and to do so before taking action on the pending United States Telephone Association (USTA) Petition for Rulemaking on access charge reform. While commentators raise myriad issues, SWBT restricts its Reply to the following issues which it views as critical at this point or in need of clarification.

I. A GREAT MAJORITY OF PARTIES AGREE THAT THE COMMISSION SHOULD CONDUCT A UNIVERSAL SERVICE PROCEEDING.

Based upon the comments filed, one thing is clear: universal service is a complex area that is ripe for Commission investigation. The great majority of commenting parties are in agreement that the Commission should conduct a proceeding on

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important universal service issues.¹ SWBT certainly numbers itself among that majority, as explained in its Comments (pp. 2, 6). In fact, like some other parties,² SWBT in its Comments supplied details regarding the kinds of considerations that the Commission should entertain in conducting any such proceeding (*Id.*, pp. 6-19 and Attachment 1).

It is also clear that this investigation should be based on an objective evaluation of the issues presented. Several parties have raised issues that should be addressed, albeit some are predicated upon self-serving biases. The Commission has the obligation to frame the investigation in terms that promote the public good. The success of any new universal service paradigm will be measured by the extent to which consumers reap the benefits.

Thus, the Commission can and should prepare to conduct a broad-ranging proceeding on key universal service issues in the near future. However, the timing of such a proceeding, especially vis-a-vis that of the much-needed access charge reform rulemaking proceeding, is of paramount importance.

II. NO COMPELLING REASONS HAVE BEEN PRESENTED FOR DELAYING THE USTA ACCESS REFORM RULEMAKING UNTIL AFTER A UNIVERSAL SERVICE PROCEEDING CAN BE CONDUCTED.

Although a few parties attempted to justify MFS' position that the access reform rulemaking should be delayed until a far-

¹ *See*, e.g., Ameritech at pp. 1-3; Bell Atlantic at pp. 1-2; NYNEX at pp. 2-3; Pacific and Nevada Bell at pp. 1-4; SWBT at pp. 2 and 6; US West at p. 1.

² *See*, e.g., NCTA at pp. 3, 7-9; USTA at pp. 8-12.

reaching universal service inquiry proceeding can be finalized,³ no such party presented any worthwhile support for that decidedly unwarranted position. On the other hand, a number of parties explained why the Commission should proceed to issue an NPRM on access reform immediately, and demonstrated that the access reform urged by USTA will have no detrimental effects upon universal service.⁴

It is also clear that the consensus position is that a separate proceeding should be initiated to address universal service. Universal service issues are too complex to be rolled into access reform. Access reform can and should move forward without any delay so the full benefits of a competitive access market are realized.

III. TELEPORT ADVANCES A NUMBER OF ARGUMENTS FOR DELAYING ACCESS REFORM THAT ARE COMPLETELY BASELESS.

A. Teleport's Concept of "Equal Access" to Subsidies is Without Merit.

Teleport's Universal Service Proposal states that "equal access to the local exchange subsidies will be essential for the evolution of local exchange competition" (p. 2 of Teleport's paper which was attached to its Comments). Apparently, current regulations which allow Teleport to cream skim access service revenues are not sufficient for Teleport to be competitive. Now, Teleport wants the ability to cream skim subsidies as well. In

³ See, e.g., TCG, pp. 2-3.

⁴ See, e.g., Comments of SWBT at pp. 2-5; BellSouth, pp. 2-4; US West, p. 3.

each instance, Teleport's desire is merely to improve even further its existing advantageous competitive position.

Subsidies that exist in LEC rates are largely related to embedded costs associated with facilities and administrative requirements for providing a ubiquitous network infrastructure used to achieve universal service goals. Teleport has not incurred such costs nor should it selectively share in a support system initiated for recovery of such costs. LECs, through their "social contracts" with regulators, are entitled to recovery of their embedded costs. The idea of a competitor sharing in the recovery of a LEC's embedded costs -- costs dictated by regulatory requirements that LECs alone bear -- is simply ludicrous.

The only sensible way to promote additional competition is to loosen regulations and allow LECs to rebalance prices to align them more closely with costs. If necessary, price changes could transition over a period of time. This process will potentially eliminate many subsidies from LEC prices. If rates are not affordable to specific end users, then explicit support amounts could be targeted to them. With LEC prices rebalanced, it would be left to the dynamics of the marketplace to determine which competitors succeed.

B. Subsidy Amounts and Subsidy Flows

Teleport states that an open system can determine the "real" residential subsidy (Teleport paper, p. 4). Teleport questions the current subsidy flows and levels. Teleport further asserts that "it is difficult for regulators or competitors to contradict a telephone company that has all the numbers regarding

the costs of serving various customers" (Id.). Teleport goes so far as to say that there is good reason to believe that "claimed cross subsidies do not actually exist" (Id.).

The answers to subsidy questions are not all entirely within the LECs' hands. LECs file substantial data as part of the Commission's ARMIS reporting process, tariff filings, and regulatory proceedings. This data is available to the general public. Therefore, it is simply in error to assert that LECs have "all the numbers."

With regard to subsidy flows, it is true that subsidies flow in directions other than to residential service. For example, in CC Docket No. 91-213, SWBT filed a study which demonstrated that interstate transport access rates provide support for providing transport services to high cost areas. The direction of subsidy flow will most likely continue to be a subject of contention in part because of disputes over cost studies and the assignment of significant amounts of joint and common costs. Indeed, the subsidy argument could go on forever. Rather than debate the issue over extensive periods, it makes more sense to allow LECs to rebalance their prices to minimize subsidy amounts and flows.⁵

C. Open System of Subsidy

Interestingly, Teleport proposes an "open" system to determine subsidies that it previously claimed may not exist.

⁵ Teleport's Comments provide evidence that this may not be an unreasonable approach. Teleport cites an Ameritech filing which states that, "in Illinois, where many of the universal service subsidies have been eliminated, local rates are still reasonable and telephone subscribership of 95.6% remains above the national average" (Teleport paper, p. 5).

Teleport concludes that the only way to find out for sure if subsidies really exist or are needed is to replace the "black box" with an open and self-policing system. Teleport's system requires the establishment of a Universal Service Assurance (USA) Fund. Among other things, Teleport's USA proposal suggests that:

- Regulators and legislators establish equitable rules for certifying new facilities-based LECs. Teleport in a footnote outlines nine arrangements that are needed. These are clearly on record and it is not necessary to repeat them here.
- Regulators must provide for full interconnection of LEC networks.
- Incumbent LECs should identify the initial amount of subsidy required to maintain service to each of the claimed subsidized customers.
- All intrastate common carriers of two-way public telecommunications services should contribute to the USA Fund according to their share of the market.
- Any certified facilities-based local carrier serving a subsidized customer may claim the subsidy from the Fund.
- A system of annual reassessment of required subsidies should be conducted to determine if competitive effects have lessened required amounts. This system would operate until subsidies were no longer required.⁶

This system would do nothing to significantly enhance universal service. Teleport's USA proposal is obviously targeted to improve its own competitive position. In fact, as indicated above, many of the stated requirements for USA are targeted at increasing local exchange competition, not universal service. Universal service is alive and well today. While increased local exchange competition may be a desirable goal, it is not necessary for "assurance" of universal service. A system which would allow competitors to steal recovery of legitimate LEC costs would do

⁶ Teleport's paper, pp. 7-9.

nothing more than provide perverse incentives for competitive entry.

IV. THE PROPOSED USF RULEMAKING IS TOO NARROW TO PROPERLY ADDRESS UNIVERSAL SERVICE ISSUES.

Some parties seem to confuse the current Universal Service Fund (USF) with other over-arching universal service issues. The USF is only one mechanism among many used by regulators to promote universal service objectives. The proposed USF rulemaking does not seem to contemplate an exhaustive evaluation of broad universal service issues. Rather, it presumes to address comprehensive "USF" issues only. As presented, the proposed rulemaking would appear to address only issues involving the current fund, including such things as who should pay into the fund, on what basis they should pay, who should receive the funds, and the criteria for dispersal.⁷ Such a limited analysis does not address all of the broad universal service issues raised by the commentators herein.

SWBT recommends initiation of a broad and comprehensive proceeding to address the myriad universal service issues in order to develop a new plan for the promotion of universal service goals in a more competitive market environment. Following this course of action would eliminate the need for a separate and limited USF proceeding.

⁷ See September 14, 1993 Notice of Proposed Rulemaking, FCC 93-435.

V. CONCLUSION

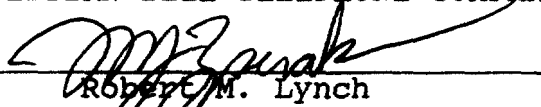
Although commenting parties have shown widespread agreement on the general need for a Commission proceeding to consider a number of important universal service issues, no party has advanced any compelling reasons for delaying the desperately needed access charge reform rulemaking sought by USTA merely in order to conduct a universal service proceeding first. There is no reason why both areas could not be addressed by the Commission in separate proceedings that overlap in time.

However, due to the public interest harm to true competition that is occurring every day from current asymmetric regulation, the USTA access charge reform rulemaking proceeding should be commenced as quickly as possible and should be completed no later than year-end 1994. It should not be delayed by being made a part of (or subject to) a broader and more complicated universal service proceeding.

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CERTIFICATE OF SERVICE

I, Joseph Meier, hereby certify that the foregoing "Reply
Comments Of Southwestern Bell Telephone Company", in File No.
RM-8388, has been served this 3rd day of January, 1994, to the Parties
of Record.


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